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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE IRMA E. GONZALEZ)

UNITED STATES OF AMERICA, Plaintiff, v. JORGE HERNANDEZ, Defendant. - -	)	Case No. 07-CR-2953-IEG Date: 3/3/2008 Time: 2:00 p.m. NOTICE OF MOTIONS AND MOTIONS TO: 1) DISMISS THE INDICTMENT BECAUSE THE PRIOR DEPORTATION IS INVALID; 2) SUPPRESS POST ARREST STATEMENTS BASED ON MIRANDA AND INVOLUNTARINESS; 3) DISMISS INDICTMENT FOR FAILURE TO ALLEGE LOCATION OF ALLEGED OFFENSE; 4) DISMISS INDICTMENT FOR FAILURE TO ALLEGE DATE OF ALLEGED REMOVAL; 5) DISMISS INDICTMENT FOR FAILURE TO ALLEGE TEMPORAL RELATIONSHIP BETWEEN PRIOR CONVICTION AND REMOVAL; 6) DISMISS INDICTMENT FOR FAILURE TO ALLEGE MENS REA; AND 7) LEAVE TO FILE FURTHER MOTIONS

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
REBECCA S. KANTER, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on Monday, March 3, 2008, before the Honorable Irma E. Gonzalez, at 2:00 p.m., or as soon thereafter as counsel may be heard, the defendant, JORGE HERNANDEZ, by and through counsel, Michael Edmund Burke, will ask this Court to issue an order granting the motions listed below.

MOTIONS

The defendant, JORGE HERNANDEZ by and through counsel, Michael Edmund Burke, asks this Court pursuant to the Fifth and Sixth Amendments to the United States Constitution, Federal Rules of Criminal Procedure, and all other applicable statutes and local rules for an order to:

1) DISMISS THE INDICTMENT BECAUSE THE PRIOR DEPORTATION IS INVALID;

2) SUPPRESS POST ARREST STATEMENTS BASED ON MIRANDA AND INVOLUNTARINESS;

3) DISMISS INDICTMENT FOR FAILURE TO ALLEGE LOCATION OF ALLEGED OFFENSE;

4) DISMISS INDICTMENT FOR FAILURE TO ALLEGE DATE OF ALLEGED REMOVAL;

5) DISMISS INDICTMENT FOR FAILURE TO ALLEGE TEMPORAL RELATIONSHIP BETWEEN PRIOR CONVICTION AND REMOVAL;

6) DISMISS INDICTMENT FOR FAILURE TO ALLEGE MENS REA; AND

7) LEAVE TO FILE FURTHER MOTIONS.

These motions are based upon the instant motions and notice of motions, the attached memorandum of points and authorities in support of defendant's motions, the files and records in the above-captioned matter, and any and all other materials that may come to this Court's attention prior to or during the hearing of these motions.

Respectfully submitted,

s/Michael Edmund Burke

Dated: February 19, 2008

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Michael Edmund Burke,
Attorney for Defendant,
JORGE HERNANDEZ

CERTIFICATE OF SERVICE

I, Michael Edmund Burke, hereby certify to the best of my information and belief that by having e-filed the "NOTICE OF MOTIONS AND MOTIONS TO 1) DISMISS THE INDICTMENT BECAUSE THE PRIOR DEPORTATION IS INVALID; 2) SUPPRESS POST ARREST STATEMENTS BASED ON MIRANDA AND INVOLUNTARINESS; 3) DISMISS INDICTMENT FOR FAILURE TO ALLEGE LOCATION OF ALLEGED OFFENSE; 4) DISMISS INDICTMENT FOR FAILURE TO ALLEGE DATE OF ALLEGED REMOVAL; 5) DISMISS INDICTMENT FOR FAILURE TO ALLEGE TEMPORAL RELATIONSHIP BETWEEN PRIOR CONVICTION AND REMOVAL; 6) DISMISS INDICTMENT FOR FAILURE TO ALLEGE MENS REA; AND 7) LEAVE TO FILE FURTHER MOTIONS' and "MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTIONS", I have caused a copy of each to have been served via electronic mail upon each of the following:

Rebecca Kanter Rebecca.Kanter@usdoj.gov, diana.ortiz@usdoj.gov, efile.dkt.gc1@usdoj.gov
U S Attorney CR Efile.dkt.gc2@usdoj.gov

s/Michael Edmund Burke

Dated: February 19, 2008

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Michael Edmund Burke,
Attorney for JORGE HERNANDEZ